

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL ACTION NO.
	)	2:07cr222-MHT
ANTONIO T. MCDADE and	)	(WO)
COURTNEY D. FLOWERS	)	

OPINION AND ORDER

This case is before the court on the United States's unopposed motion to continue the trial of defendants Antonio T. McDade and Courtney D. Flowers. For the reasons set forth below, the court finds that jury selection and trial, now set for January 5, 2009, should be continued pursuant to 18 U.S.C. § 3161(h)(7).

While the granting of a continuance is left to the sound discretion of the trial judge, United States v. Stitzer, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy

Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court shall consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice," § 3161(h)(7)(B)(i), or "would deny counsel for the defendant or the attorney for the Government the

reasonable time necessary for effective preparation, taking into account the exercise of due diligence."  
§ 3161(h)(7)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and the defendants in a speedy trial. McDade's counsel recently filed a notice of insanity defense, and the government needs additional time to conduct further investigation and evaluation that simply cannot be completed before the current trial date. In addition, the parties are negotiating a possible resolution of the charges against Flowers. Finally, if the defendants should go to trial, it is best that they be tried together, and neither defendant opposes the continuance.

Accordingly, it is ORDERED as follows:

(1) The government's motion for continuance (Doc. No. 90) is granted.

(2) The jury selection and trial for defendants Antonio T. McDade and Courtney D. Flowers, now set for January 5, 2009, are reset for July 20, 2009, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.

DONE, this the 17th day of December, 2008.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE